

REMARKS

The final Office Action mailed May 18, 2006 has been carefully reviewed and the foregoing amendments have been made as a consequence thereof.

Claims 1, 3-6, 9-18, 20 and 21 are now pending in this application. Claims 1, 3-6 and 9-11 stand rejected. Claims 12-18, 20 and 21 are allowed. Claims 2, 7, 8 and 19 have been canceled.

Entry of this amendment is proper under 37 CFR § 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration as the amendment relates to issues previously discussed throughout prosecution; (c) does not present any additional claims without canceling a corresponding number of finally rejected claims; and (d) places the application in better form for appeal, should an appeal be necessary. The amendment herein is necessary and was not earlier presented because it is made in response to arguments raised in the final Office Action. Entry of this amendment is thus respectfully requested.

The rejection of Claims 1, 3-6, and 9-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 4,735,470 to Falk (hereinafter referred to as "Falk") in view of U.S. Patent 5,340,209 to Kolbe et al. (hereinafter referred to as "Kolbe") is respectfully traversed.

Falk describes a system having a shelf assembly (20) including a shelf (21) and a pair of spaced support brackets (22). The shelf (21) is supported on and extended between the brackets (22) by members (38) of extruded material. The brackets (22) each include a runner (42) that is disposed beneath the shelf (21) and that extends substantially a full length of the respective bracket (22). Each runner (42) defines a groove (44) that also extends substantially the full length of the runner (42) to slidably support a frame (40) therefrom. A front end of each groove (44) includes an integral vertical projection (45) designed to engage

a recessed stop (51) provided on an outwardly projecting flange (49) of a side wall portion (48) of a food storage assembly (30).

The Examiner asserts that a top surface of the runner (42) corresponds to a “ledge” (identified as reference numerals 1 and 2 in Figure 4 attached to the April 11, 2005 Office Action). The Examiner also asserts that a forward portion of the identified “ledge” corresponds to a “clearance portion” with a horizontal aperture (identified as reference numerals 1, 2, and 3 in Figure 4 attached to the April 11, 2005 Office Action). Further, the Examiner asserts that the recessed stop (51) corresponds to a stop tab integral with a shelf. Notably, the identified “clearance portion” does not define an **opening extending through** a top surface and a bottom surface of a ledge of a shelf side support. Also, the stop (51) is not **projecting**.

Kolbe describes a system including a slide-out shelf assembly (20) having supports (23 and 24), and a shelf structure (27). The shelf structure (27) includes a shelf rim (34) having a latch member (44) provided therein. The latch member (44) includes tabs (53 and 54) and a resilient finger (49) that respectively engage slots (59, 60, and 61) provided in the support (23). In a retracted mounted position of the shelf structure (27) on the supports (23 and 24), a distal end (52) of the resilient finger (49) is received in a recess (63) in the shelf rim (34). However, in the extended position, the distal end (52) of the resilient finger (49) projects through a recessed slot (66) provided in the shelf rim (34). Notably, the support (23) does not define an **opening extending through** the top surface and a bottom surface of the runner (39) of the support (23). Also, the slot (66) of the shelf rim (34) is not **projecting**.

Claim 1 recites a system for limiting outward movement of a slide-out shelf that includes at least one projecting forward stop tab and at least one rear tab, the system comprising “a plurality of side supports configured to support the shelf, each said side support comprising a ledge comprising: a rear portion having a first width sufficient to retain the rear tab; a forward portion having a second width less than said first width and sufficient to retain the forward stop tab, each of said rear portion and said forward portion including a top surface and an opposing bottom surface, wherein said forward portion is configured to

provide a clearance for the rear tab and to further provide a clearance portion having a third width less than said second width, said clearance portion defining an opening extending through said top surface and said bottom surface, wherein said clearance portion is configured to provide a clearance for receiving the forward stop tab; ...”

Neither Falk nor Kolbe, considered alone or in combination, describes or suggests a system for limiting outward movement of a slide-out shelf as recited in Claim 1. More specifically, no combination of Falk and Kolbe describes or suggests a side support including a ledge having a clearance portion defining an **opening extending through** a top surface and a bottom surface of the ledge so as to provide a clearance for receiving a stop tab of a shelf supported thereon. Rather, in contrast to the present invention, Falk describes a runner (42) including a **groove** on a top flange thereof, grooves (44) that receive and remove the flanges (49) of the support bracket (22), and a vertical projection (45) positioned on a bottom flange of the runner (42) to engage a **recessed** stop (51) of the flange (49) for reducing further forward sliding movement. Kolbe describes slots (59, 60, and 61) of the support (23) that receive portions of the resilient finger (49), which in turn project through the **recessed** slot (66) in the shelf rim (34). Accordingly, for at least the reasons set forth above, Claim 1 is respectfully submitted to be patentable over Falk in view of Kolbe.

Claims 3-6 depend, directly or indirectly, from the independent Claim 1. When the recitations of Claims 3-6 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 3-6 likewise are patentable over Falk in view of Kolbe.

Claim 9 recites a method for assembling a shelf assembly including a shelf and at least one side support, the method comprising “positioning at least one projecting forward tab and at least one rear tab extending outwardly from the shelf; positioning at least one side support including a laterally projecting ledge including a rear portion having a first width sufficient to retain the at least one rear tab and a forward portion having a second width less than the first width, each of the rear portion and the forward portion including a top surface and an opposing bottom surface, wherein the forward portion provides a clearance for the at

least one rear tab; positioning a clearance portion in the forward portion having a third width less than the second width, the clearance portion defining an opening extending through the top surface and the bottom surface, wherein the clearance portion provides a clearance for receiving the at least one forward tab; ...”

Neither Falk nor Kolbe, considered alone or in combination, describes or suggests a method for assembling a shelf assembly as recited in Claim 9. More specifically, no combination of Falk and Kolbe describes or suggests positioning at least one side support including a laterally projecting ledge, and positioning a clearance portion in a forward portion of the ledge, the clearance portion defining an opening extending through the top surface and the bottom surface, so as to provide a clearance for receiving a forward stop tab of a shelf supported thereon. Rather, in contrast to the present invention, Falk describes providing a support bracket (22) including a runner (42) having a **groove** on a top flange thereof, grooves (44) that receive and remove the flanges (49) of the frame (40), and a vertical projection (45) positioned on a bottom flange of the runner (42) to engage a **recessed stop** (51) of the flange (49) of the frame (40) for reducing further forward sliding movement. Kolbe describes slots (59, 60, and 61) of the support (23) that receive portions of the resilient finger (49), which in turn project through the **recessed slot** (66) in the shelf rim (34). Accordingly, for at least the reasons set forth above, Claim 9 is respectfully submitted to be patentable over Falk in view of Kolbe.

Claims 10 and 11 depend, directly or indirectly, from independent Claim 9. When the recitations of Claims 10 and 11 are considered in combination with the recitations of Claim 9, Applicants submit that dependent Claims 10-11 likewise are patentable over Falk in view of Kolbe.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Falk nor Kolbe, considered alone or in combination, describes or suggests the claimed combination. Further,

in contrast to the Examiner's assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Falk and Kolbe, because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching. Rather, only the conclusory statement that "it would have been obvious to a person having ordinary skill in the art at the time of the present invention to have utilized side supports shaped like the supports taught by Kolbe et al." suggests combining the disclosures.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levingood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Further, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Since there is no teaching or suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection be withdrawn.

In addition, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Falk nor Kolbe, considered alone or in combination, describes or suggests a side support including a ledge having a clearance portion defining an **opening extending through** a top surface and a bottom surface of the ledge so as to provide a clearance for receiving a stop tab of a shelf supported thereon.

For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1, 3-6, and 9-11 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully submitted,

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